

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TERAZZE TAYLOR,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF
CORRECTIONS,

Defendant.

CASE NO. 3:21-cv-05224-RJB

ORDER TO SHOW CAUSE OR
AMEND COMPLAINT

The *in forma pauperis* (“IFP”) motion (Dkt. 5) and proposed complaint (Dkt. 1-1) in this matter are before the Court on referral from the District Court, as authorized by Amended General Order 02-19.

Pursuant to 28 U.S.C. § 1915(e)(2), the Court may dismiss a proposed complaint where a plaintiff seeks to proceed IFP and the proposed complaint fails to state a claim or is frivolous or malicious. Here, plaintiff has failed to state a claim: plaintiff seeks to bring suit for civil rights deprivations under 42 U.S.C. § 1983, for a writ of mandamus, and under state law. But plaintiff names a defendant (the Washington Department of Corrections) who is not amenable to suit

1 under 42 U.S.C. § 1983 and regarding whom this Court does not have jurisdiction to issue a writ
2 of mandamus.

3 The Court will provide plaintiff with an opportunity to amend his proposed complaint to
4 correct the deficiencies identified in this Order; however, the Court declines to rule or issue a
5 report and recommendation on his IFP application until plaintiff has done so. Moreover, failure
6 to timely comply with this Order will result in a recommendation that the matter be dismissed
7 without prejudice.

8 **BACKGROUND**

9 Plaintiff filed his IFP motion March 27, 2021, and corrected his motion on April 8, 2021.
10 *See* Dkts. 1, 5. Plaintiff seeks to bring suit against the Department of Corrections and unnamed
11 defendants under 42 U.S.C. § 1983. *See* Dkt. 1-1, at 1. He also cites the mandamus statute, “42
12 U.S.C. § 1331 [sic],” and seeks to bring state law claims for “fraudulent representation” and
13 “gross negligence.” *See* Dkt. 1-1, at 1, 13–14. The Court interprets the citation to 42 U.S.C. §
14 1331 as a citation to 28 U.S.C. § 1361, the federal mandamus statute.

15 The requirements for relief under § 1983 are “(1) a violation of rights protected by the
16 Constitution or created by federal statute, (2) proximately caused (3) by conduct of a ‘person’ (4)
17 acting under color of state law.” *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). As
18 relevant here, Washington State is not a “person” for purposes of § 1983, so that § 1983 claims
19 against the State are legally frivolous. *See Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir.
20 1989), *superseded by statute on other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1130
21 (9th Cir. 2000) (en banc). A state agency—such as the Washington Department of
22 Corrections—is an arm of the state and therefore is not a “person” for § 1983 purposes, either.
23 *See Howlett v. Rose*, 496 U.S. 356, 365 (1990)).
24

1 The only named defendant in this suit is the Department of Corrections, so that plaintiff's
 2 suit fails to name a cognizable defendant for purposes of his § 1983 claims. If plaintiff wishes to
 3 press his claims under § 1983, he must amend his complaint to name a "person" or "persons"
 4 under § 1983 who have deprived him of constitutional rights. Plaintiff should be aware that state
 5 officials sued in their official capacities for damages are not "persons," either, although a § 1983
 6 suit may be brought against state officials in their individual capacities for damages. *See*
 7 *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 69 n.69 (1997).

8 As for plaintiff's mandamus claim, the federal mandamus statute provides, "[t]he district
 9 courts shall have original jurisdiction of any action in the nature of mandamus to compel *an*
 10 *officer or employee of the United States or any agency thereof* to perform a duty owed to the
 11 plaintiff." 28 U.S.C. § 1361 (emphasis added). But "[t]he federal courts are without power to
 12 issue writs of mandamus to direct state courts or their judicial officers in the performance of their
 13 duties. . . ." *Clark v. Washington*, 366 F.2d 678, 681 (9th Cir. 1966); *see also Davis v. Lansing*,
 14 851 F.2d 72, 74 (2d Cir. 1988) ("The federal courts have no general power to compel action by
 15 state officials[.]"). Plaintiff's claim for mandamus compelling the Department of Corrections to
 16 act is, therefore, legally frivolous and subject to dismissal.

17 Finally, plaintiff seeks to avail himself of the Court's federal question jurisdiction (*see* 28
 18 U.S.C. § 1331) but fails to state any viable claim under federal law. Therefore, the Court does
 19 not address his supplemental state law claims. If plaintiff fails to amend his complaint to state an
 20 adequate claim under federal law, the Court will recommend dismissal of the state law claims.
 21 *See* 28 U.S.C. § 1367 (authorizing a court to dismiss supplemental state law claims where the
 22 district court has dismissed all claims over which it has original jurisdiction).

